

**JUL 25 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

SAUL GREGORIO MARTINEZ,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION  
SERVICE,

Respondent.

No. 02-71478

Agency No. A70-217-803

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted July 15, 2003  
Pasadena, California

Before: KLEINFELD, WARDLAW, Circuit Judges, and POGUE, CIT Judge.\*\*

Saul Martinez, a native and citizen of Guatemala, petitions for review of the  
decision by the Board of Immigration Appeals denying his application for asylum

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\* This disposition is not appropriate for publication and may not be cited to or  
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Donald Pogue, U.S. Court of International Trade, sitting  
by designation.

and request for withholding of deportation. We have jurisdiction under 8 U.S.C. § 1105a (repealed 1996) and we grant the petition.

As both parties conceded, the BIA undertook an independent analysis of Martinez's testimony and "agreed with," but did not adopt, the IJ's decision that Martinez's description of past persecution was not credible. *See Cordon-Garcia v. INS*, 204 F.3d 985, 990 (9th Cir. 2000) ("Where the BIA reviews the IJ's decision de novo, our review is limited to the BIA's decision, except to the extent the IJ's opinion is expressly adopted."). The adverse credibility determination resulted from Martinez's misrepresentation on his initial asylum application that he had been persecuted based on political belief, rather than sexual orientation. He explained the misrepresentation was due to a fear of facing further persecution if the government learned of his sexual orientation.

The BIA provided no "specific cogent reasons" for rejecting this justification. *Valderrama v. INS*, 260 F.3d 1083, 1085 (9th Cir. 2001). Moreover, "misrepresentations [that] are wholly consistent with [petitioner's] testimony and application for asylum" do not support a negative credibility finding. *Akinmade v. INS*, 196 F.3d 951, 955 (9th Cir. 1999); *see also Paramasamy v. Ashcroft*, 295 F.3d 1047, 1053 (9th Cir. 2002). Because the BIA stated only that it was "not persuaded by respondent's explanations" and provided

no legitimate, let alone cogent, reason for rejecting Martinez's "wholly consistent" misrepresentation, we remand for proceedings consistent with this disposition.

**PETITION GRANTED.**